



Department of Energy

Washington, DC 20585

NOV 26 2003

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Mr. Bernard F. Cowan
4380 East 300 North
Rigby, ID 83442

Re: Case No. VBB-0061

Dear Mr. Hall and Mr. Cowan:

This letter concerns the Complaint of Retaliation filed with the Department of Energy (DOE) by Mr. Cowan (Complainant) under 10 C.F.R. Part 708. Mr. Cowan filed a Petition for Secretarial Review of a February 27, 2003 appeal decision issued by the Director of the Office of Hearings and Appeals (OHA) in connection with this proceeding. Mr. Hall also filed a Petition for Secretarial Review of the February 27 Decision. That Petition was filed on behalf of Argonne National Laboratory-West (ANL). Under the Part 708 regulations, the Secretary will reverse or revise an appeal decision by the Director of OHA only in extraordinary circumstances. 10 C.F.R. § 708.35(d). As discussed below, neither Petitioner has met the regulatory standard.

The ANL Petition for Review raises four matters. First, it objects to a finding that Complainant's whistleblowing activity was a contributing factor to ANL's three-day suspension of the Complainant ten months later. Second, ANL argues that the Complainant did not make a disclosure that qualifies for protection under Part 708. Third, ANL contests a conclusion by an OHA Hearing Officer that ANL did not present clear and convincing evidence that, in the absence of the Complainant's Part 708 protected activity, ANL would have suspended the Complainant for improper use of ANL E-mail. Finally, ANL contends that my conclusion in the February 27 determination that the Complainant's reinstatement to his former position was not a workable remedy was inconsistent with my finding that the transfer of the Complainant away from his former position was retaliatory.



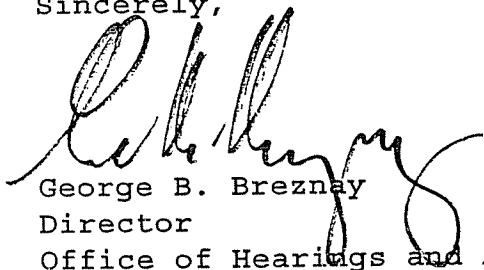
In his Petition for Review, the Complainant takes issue with my finding that his own actions contributed to the negative attitude of the ANL managers who did not want him back in his former position. The Complainant also objects to my finding that he refused to cooperate with those investigating his allegations of criminal sabotage.

None of these arguments establishes a basis for Secretarial Review. ANL's first two arguments contest the application of legal principles well-established in this and other OHA proceedings and in the federal courts. ANL's other arguments, as well as the issues the Complainant raises, are wholly fact-bound objections that merely seek to reargue determinations with which each party disagrees. The arguments raised present nothing of an extraordinary nature.

The Deputy Secretary of Energy has reviewed the ANL and Cowan Petitions and concurs with the above determinations. He has authorized me to send you this letter dismissing the Petitions for Review for failure to demonstrate extraordinary circumstances.

If you have questions concerning this matter, please call Thomas L. Wieker, Deputy Director, OHA, at (202) 287-1543.

Sincerely,

A handwritten signature in dark ink, appearing to read "George B. Breznay", is written over the typed name and title.

George B. Breznay
Director
Office of Hearings and Appeals